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SENATE BILL 207

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO PROCUREMENT; ENACTING SECTIONS OF THE PROCUREMENT CODE; REQUIRING ATTORNEY GENERAL REVIEW OF CERTAIN CONTRACTS; PROVIDING FOR WARRANTIES, TEST PERIODS AND PAYMENT HOLDBACKS FOR CERTAIN INFORMATION TECHNOLOGY CONTRACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Procurement Code is enacted to read:

"NEW MATERIAL] DEFINITION-- INDEPENDENT VERIFICATION AND VALIDATION. -- "Independent verification and validation" means the process of evaluating a system to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an organization independent of the

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1 development organization. "

2 Section 2. A new section of the Procurement Code is
3 enacted to read:

4 "[NEW MATERIAL] DEFINITION-- INFORMATION TECHNOLOGY. --
5 "Information technology" means computer and voice and data
6 communication software and hardware, including imaging systems,
7 terminals and communications networks and facilities, staff
8 information systems services and professional services
9 contracts for information systems services. "

10 Section 3. A new section of the Procurement Code is
11 enacted to read:

12 "[NEW MATERIAL] DEFINITION-- INFORMATION TECHNOLOGY
13 PROJECT. -- "Information technology project" means the
14 development, purchase, replacement or modification of a
15 software system, including all phases or modules of a project
16 with a common objective. "

17 Section 4. A new section of the Procurement Code is
18 enacted to read:

19 "[NEW MATERIAL] DEFINITION-- SOFTWARE SYSTEM -- "Software
20 system" means written programs, procedures or rules and
21 associated documentation pertaining to the operation of a
22 computer system that are stored in some form of electronic
23 media. "

24 Section 5. A new section of the Procurement Code is
25 enacted to read:

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1 "[NEW MATERIAL] CONTRACTS-- ATTORNEY GENERAL REVIEW. --

2 A. Contracts that are not exempt from the
3 provisions of the Procurement Code and that have a total cost
4 in excess of two hundred thousand dollars (\$200,000) shall be
5 reviewed and approved by the office of the attorney general
6 before final approval can be given by the contracting state
7 agency.

8 B. The provisions of this section do not apply to
9 contracts for emergency procurements pursuant to the provisions
10 of Section 13-1-127 NMSA 1978. "

11 Section 6. A new section of the Procurement Code is
12 enacted to read:

13 "[NEW MATERIAL] INFORMATION TECHNOLOGY PROJECT CONTRACTS--
14 REVIEW- -WARRANTIES--HOLDBACK FUNDS.--Contracts for an
15 information technology project with a total cost in excess of
16 two hundred thousand dollars (\$200,000) shall comply with the
17 following requirements in addition to requirements imposed by
18 the Procurement Code or other applicable state statute or rule:

19 A. the contract shall be reviewed and approved by
20 the state agency contracting for the project, the department of
21 finance and administration, the office of the attorney general
22 and the office of the chief information officer;

23 B. the contract shall provide for a holdback from
24 payment to the contractor of funds comprising at least ten
25 percent of the total contract price, which holdback funds shall

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1 not be released to the contractor until the provisions of
2 Section 8 of this 2005 act have been satisfied; and

3 C. the contract shall include a warranty containing
4 at least the following provisions:

5 (1) performance specifications for the
6 software system that is the subject of the information
7 technology project;

8 (2) agreement that for a period of six months
9 following the completion of the information technology project,
10 as evidenced by the payment of all holdback funds to the
11 contractor, the contractor shall at no additional cost fix,
12 modify or otherwise resolve problems experienced by the
13 contracting state agency with the software system that is the
14 subject of the information technology project; and

15 (3) certification that the information
16 technology project is utilizing the information technology that
17 represents the industry standard at the time the project
18 commenced. "

19 Section 7. A new section of the Procurement Code is
20 enacted to read:

21 " [NEW MATERIAL] INFORMATION TECHNOLOGY PROJECT CONTRACTS--
22 INDEPENDENT VERIFICATION AND VALIDATION. --Contracts for an
23 information technology project with a total cost in excess of
24 one million dollars (\$1,000,000) shall provide for an
25 independent verification and validation of the project at

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1 specified stages in the project and periodic reports by the
2 verifying organization, which shall be provided on at least a
3 quarterly basis directly to the state agency contracting for
4 the project, the office of the chief information officer, the
5 department of finance and administration, the legislative
6 finance committee and the legislative information technology
7 oversight committee. "

8 Section 8. A new section of the Procurement Code is
9 enacted to read:

10 "[NEW MATERIAL] INFORMATION TECHNOLOGY PROJECT CONTRACTS--
11 RELEASE OF HOLDBACK FUNDS.--Holdback funds shall be released
12 only when the state agency contracting for the project and the
13 office of the chief information officer have determined that
14 all of the terms of the contract for the information technology
15 project have been satisfied by the contractor and that the
16 software system is performing in accordance with the
17 specifications contained in the contract. "